

DATED

2024

ISSUED IN DRAFT

(1) BUCKINGHAMSHIRE LOCAL ENTERPRISE PARTNERSHIP LIMITED

AND

(2) BUCKINGHAMSHIRE COUNCIL

AGREEMENT

relating to the transfer of functions, assets and liabilities of Buckinghamshire Local Enterprise Partnership Limited to Buckinghamshire Council

SHARPE PRITCHARD

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THIS AGREEMENT is made on

2024

BETWEEN

- (1) **BUCKINGHAMSHIRE LOCAL ENTERPRISE PARTNERSHIP LIMITED**, a private limited company incorporated and registered in England and Wales with company number 11912208 whose registered office is at Westcott Business Incubation Centre, Westcott Venture Park, Westcott, Aylesbury, Buckinghamshire HP18 0NX (the **LEP**); and
- (2) **BUCKINGHAMSHIRE COUNCIL** of The Gateway, Gatehouse Road, Aylesbury, Buckinghamshire HP19 8FF (the **Council**).

RECITALS

- (A) In the 2023 Spring Budget, the government set out that it was minded to withdraw central government support (core funding) for local enterprise partnerships from April 2024 and transfer the functions of local enterprise partnerships to local authorities. The government confirmed its 'minded to' decision in August 2023 following an information gathering exercise.
- (B) The government expects those functions carried out by local enterprise partnerships under current core funding agreements to now be exercised by upper tier local authorities. The Council is the upper tier local authority for Buckinghamshire.
- (C) In line with government guidance¹, the LEP and the Council have agreed that the functions of the LEP should be transferred from the LEP to the Council. For this to happen, both parties have agreed that the functions (comprising the Business), Assets and Assumed Liabilities of the LEP shall be transferred to or assigned by the LEP to the Council under the terms of this agreement.

AGREED TERMS

1. INTERPRETATION

- 1.1 The following definitions and rules of interpretation apply in this agreement.

Advance Receipts all amounts received (whether by deposit, prepayment or otherwise) by or on behalf of the LEP so far as the same relate to anything (including any service) to be provided by the Council under any of the Contracts or otherwise in connection with the carrying on of the after the Effective Time.

Assets the assets to be sold and purchased by the Council under this agreement as described in Schedule 1 and all (if any) of the other assets, property or rights of the LEP relating to or connected with, or belonging to or required or intended for use in, the Business and which are not otherwise described in Schedule 1 with the exception of the Excluded Cash.

¹ **SP Drafting note:** final version to link to final government guidance. Latest is the guidance issued on 18 December 2023 <https://www.gov.uk/government/publications/guidance-for-local-authorities-delivering-business-representation-and-local-economic-planning-functions>

Assumed Liabilities	all liabilities of the LEP at the Effective Time.
Book Debts	all trade and other debts and amounts owing to the LEP as at the Effective Time in respect of goods or services supplied by the LEP in the ordinary course of carrying on the Business (whether or not invoiced) prior to the Effective Time.
Business	the functions and business of business representation, strategic economic planning and the responsibility for the delivery of government programmes as historically carried on by the LEP up to the Effective Time.
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
Business Information	all information, know-how and techniques (whether or not confidential and in whatever form held) which in any way relate, wholly or partly, to the Business.
Business Intellectual Property Rights	Intellectual Property Rights owned, used or held for use by the LEP in, or in connection with, the Business, including the Owned Business Intellectual Property Rights.
Business Name	Buckinghamshire Local Enterprise Partnership.
Completion	the completion of the sale and purchase of the Business (comprising the Assets) in accordance with this agreement.
Completion Date	the date of this agreement.
Completion Payment	the amount payable by the Council to the LEP on Completion being the aggregate of the amounts set out against the Assets in Schedule 1.
Contracts	all contracts, arrangements, licences and other commitments relating to the Business entered into before the Effective Time and which remain to be performed, in whole or in part, at the Effective Time, which have been entered into by or for the benefit of the LEP, or the benefit of which is held in trust for or has been assigned or subcontracted to the LEP, including for the avoidance of doubt the IP Licences but excluding contracts with Employees.
Creditors	all trade debts and accrued charges owing by the LEP at the Effective Time to the trade creditors of the LEP in the ordinary course of the Business.

Data Protection Laws	all laws (whether of the UK or any other jurisdiction) relating to the use, protection and privacy of Personal Data (including, without limitation, the privacy of electronic communications) from time to time applicable to the Business.
Domain Names	all internet domain names associated with the Business.
DPA 2018	the Data Protection Act 2018.
Effective Time	12.00am on the Completion Date.
Employees	the persons employed by the LEP in the Business at the Effective Time (which, at the date of this agreement, consists of those persons whose details are set out in Schedule 3).
Excluded Cash	£[] ² being the balance of the LEP's operational budget for the financial year 23/24 plus £[] to be retained in the LEP's bank account for the purposes set out in clause 12.2.1.
Fixed Assets	all fixtures, plant, machinery, and equipment and other tangible assets owned by the LEP and used or intended for use in connection with the Business that are physically attached or fixed to any property used by the LEP as at the Effective Time.
Goodwill	the goodwill of the LEP in relation to the Business, including the benefit and advantage of the good name, reputation and connection of the Business, exclusive right for the Council to carry on the Business under the Business Name (and all other names associated with the Business) and to represent itself as carrying on the Business in succession to the LEP.
HMRC	HM Revenue and Customs.
Intellectual Property Rights	patents, rights to inventions, copyright and related rights, trade marks, business names, rights in get-up, goodwill and the right to sue for passing off rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and trade secrets, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or

Commented [CS1]: BC would prefer that post-transfer invoices are redirected to the Council.

² **SP Drafting Note:** the intention here is to ensure that the LEP has sufficient funds following Completion to allow it to discharge the various post-completion costs that it will have e.g. professional fees for winding up and potentially other ancillary costs. Under clause 12.2.1 upon the directors (which, at that point, will be the public sector directors) being satisfied that there are no further sums owing the balance of the Excluded Cash can be transferred to the Council.

	equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
IP Licences	all licences, agreements, authorisations and permissions (in whatever form, and whether express or implied) under which the LEP uses or exploits any Business Intellectual Property Rights or Business Information owned by any third party (including those specified in Part 2 of Schedule 4 (IP licences)).
IT Systems	all computer hardware (including network and telecommunications equipment), mobile devices, data (including databases (Databases)), domain names (including the Domain Names), webpages and software (including associated user manuals, object code and source code and other materials sufficient to enable a reasonably skilled programmer to maintain and modify the software) owned, used, or held for use by or in relation to the Business.
LEP Directors	such individuals who have from time to time been appointed as statutory directors of the LEP.
Losses	includes all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses).
Moveable Assets	all plant, machinery and equipment and other tangible assets owned by the LEP and used or intended for use in connection with the Business that are not physically attached or fixed to any property used by the LEP as at the Effective Time, including for the avoidance of doubt the IT Systems, furniture, furnishings and office equipment.
Owned Business Intellectual Property Rights	those Business Intellectual Property Rights which are owned by the LEP (including those set out in Part 1 of Schedule 4).
Personal Data	has the meaning given to it in the UK GDPR.
Prepayments	all amounts paid (whether by deposit, prepayment or otherwise) on or before the Effective Time by or on behalf of the LEP so far as the same relate to anything (including any service) to be provided to the Council under any of the Contracts or otherwise in connection with the carrying on of the Business after the Effective Time (but excluding liabilities in respect of Tax).
Purchase Price	has the meaning given in clause 3.

Records	all records and other storage media, regardless of form or characteristics, containing or relating to Business Information or on or in which Business Information is recorded or stored, whether machine-readable or not (including computer disks, hard drives, servers, universal serial bus (USB) sticks, the cloud, books, photographs and other documentary materials) including the VAT Records.
LEP's Solicitors	Sharpe Pritchard LLP of Elm Yard, 10-16 Elm Street, London WC1X 0BJ.
Tax or Taxation	all forms of taxation and statutory, governmental, state, federal, provincial, local, government or municipal charges, duties, imposts, contributions, levies, withholdings or liabilities (including, for the avoidance of doubt, National Insurance contribution liabilities) wherever chargeable and whether of the UK or any other jurisdiction; and any penalty, fine, surcharge, interest, charges or costs relating thereto.
Third Party Consent	a consent, licence, approval, authorisation or waiver required from a third party for the conveyance, transfer, assignment or novation in favour of the Council of any of the Assets in terms acceptable to the Council.
Third Party Rights	<p>the benefit of all rights and claims (other than rights and claims relating to Tax) of the LEP arising on or before the Effective Time out of or in connection with the Business, including (but not limited to):</p> <ul style="list-style-type: none">(a) all claims against, or rights to make any claims against, any third party in respect of any services sold or supplied to the LEP in connection with the Business on or before the Effective Time where the subject matter of the services form part of the Business;(b) all claims against, or rights to make any claims against, insurers or other third parties in respect of loss of or damage or injury caused to the Business to the extent that such loss, damage or injury has not been made good by and at the cost of the LEP on or before the Effective Time;(c) all claims made by the LEP for a loan, grant or other aid in respect of any of the Assets or the Business;(d) all rights of the LEP under any agreement under which the LEP acquired any of the Assets.

- Transaction** the transaction contemplated by this agreement or any part of that transaction.
- Transfer Formalities** all formalities that are required to transfer full and unconditional ownership and technical control of the Domain Names to the Council including the provision of online domain name account details and passwords, the selection and completion of relevant change of registrant and change of administrative contact functions within such domain name accounts, the provision of email or other online notice or confirmation notifying the registrar of the domain name transfer, the changing of webhosts and registrars (if required by the Council) and the completion and signing of documents.
- TUPE** the Transfer of Undertakings (Protection of Employment) Regulations 2006 (*SI 2006/246*) and any predecessor regulations including the Transfer of Undertakings (Protection of Employment) Regulations 1981 (*SI 1981/1794*).
- VAT** value added tax chargeable in the UK.
- VAT Records** all records of the Business which under paragraph 6 of Schedule 11 to VATA 1994 are required to be preserved.
- VATA 1994** Value Added Tax Act 1994.
- Warranties** [the warranties given by the LEP pursuant to clause 5 and set out in Schedule 6.](#)
- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 References to clauses and Schedules are to the clauses of and Schedules to this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.5 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.6 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- 1.8 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective successors and permitted assigns, and references to any party shall include that party's successors and permitted assigns.
- 1.9 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.10 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.11 Unless expressly provided otherwise in this agreement, a reference to **writing** or **written** excludes fax but not email.
- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13 References to a document in **agreed form** are to that document in the form agreed by the parties and initialled by them or on their behalf for identification.
- 1.14 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

2. SALE AND PURCHASE

- 2.1 Subject to the terms of this agreement, the LEP shall sell the Assets [with full title guarantee and free from all Encumbrances](#) and the Council with a view to carrying on the Business as a going concern, shall purchase ~~such right, title and interest the LEP has in~~ the Assets with effect from the Effective Time.
- 2.2 Without prejudice to clause 2.1, the Council shall in addition acquire or assume the following under this agreement:
 - 2.2.1 the Creditors;
 - 2.2.2 ~~subject to clause 12.2,~~ all the LEP's cash-in-hand or at a bank or at any other financial institution;
 - 2.2.3 any Tax for which the LEP is liable, whether or not then due;
 - 2.2.4 the benefit of any and all insurance claims and repayments arising before the Effective Time in relation to the Business.

3. PURCHASE PRICE

The purchase price for the Business (comprising the Assets) to be paid by the Council to the LEP pursuant to this agreement shall be the aggregate of the values attributed to the Assets as set out in Schedule 1 (**Purchase Price**), receipt of which is hereby acknowledged by the LEP.

4. COMPLETION

- 4.1 Completion shall take place on the Completion Date.

- 4.2 At Completion, the LEP shall comply with its obligations set out in paragraph 1 of Schedule 2.
- 4.3 At Completion, the Council shall deliver to the LEP:
 - 4.3.1 duly executed counterparts of the licences, agreements, assignments and other documents referred to in paragraph 1 of Schedule 2; and
 - 4.3.2 a certified copy of the Council decision authorising the Transaction and/or the delegation of such authorisation and the execution and delivery by the officers specified in the resolution[s] of this agreement, and any other documents referred to in this agreement as being required to be delivered by it.
- 4.4 Following Completion, the Council and the LEP shall each comply with their respective obligations set out in paragraph 2 of Schedule 2.

5. WARRANTIES

- 5.1 The LEP warrants to the Council that, except as Disclosed, each Warranty is true, accurate and not misleading on the date of this agreement.
- 5.2 Warranties qualified by the expression so far as the LEP is aware (or any similar expression) are deemed to be given to the best of the LEP's knowledge, information and belief after it has made due and careful enquiries.
- 5.3 Each of the Warranties is separate and, unless specifically provided otherwise, is not limited by reference to any other Warranty or any other provision in this agreement.

5.6. GRANT PAYMENT OBLIGATIONS

To the extent not otherwise dealt with otherwise in this agreement, if the LEP is committed under a grant agreement or other form of agreement to transfer grant or other funding to an organisation after the Effective Time that was entered into by or on behalf of the LEP before the Effective Time, the Council shall assume responsibility for and discharge such commitments (including any reporting requirements contained therein) in accordance with the relevant agreement.

6.7. APPORTIONMENTS AND PREPAYMENTS

- 6.47.1 The Advance Receipts shall belong to the Council and the LEP shall pay to the Council the full amount of the Advance Receipts (excluding any amount in respect of VAT for which the LEP is required to account) and shall hold such sum in trust for the Council until it is paid.
- 6.27.2 The Prepayments shall belong to the LEP and the Council shall pay to the LEP the full amount of the Prepayments (excluding any amount in respect of VAT for which the LEP obtains a deduction for input tax) and shall hold such sum in trust for the LEP until it is paid.
- 6.37.3 All periodical charges and outgoings of the Business including but not limited to:
 - 6.3.47.3.1 all periodical amounts paid or payable under any of the Contracts; and

~~6.3.27.3.2~~ all salaries, wages, bonuses, commissions, maternity pay, paternity pay[, accrued holiday entitlement] and holiday pay entitlement, and other emoluments including but not limited to PAYE income tax, National Insurance contributions, health insurance, death in service benefits, season ticket loans and any contributions to pension arrangements,

shall (to the extent not already taken into account as a Prepayment) be apportioned on a time basis so that such part of the relevant charges and outgoings as is attributable to the period ended at the Effective Time shall be borne by the LEP and such part of the relevant charges and outgoings as is attributable to the period commencing at the Effective Time shall be borne by the Council.

~~6.47.4~~ All periodical income and receipts of the Business including but not limited to:

~~6.4.17.4.1~~ all periodical amounts received or receivable under any of the Contracts; and

~~6.4.27.4.2~~ all licence fees and royalties,

shall (to the extent not already taken into account as an Advance Receipt) be apportioned on a time basis so that such part of the relevant income and receipts as is attributable to the period ended at the Effective Time shall belong to the LEP and such part of the relevant payments and receipts as is attributable to the period commencing at the Effective Time shall belong to the Council.

7.8. LIABILITIES OF THE LEP, ~~THE LEP DIRECTORS~~ AND THE COUNCIL

The Council shall:

~~7.18.1~~ with effect from the Effective Time, assume responsibility for the payment and performance of the Assumed Liabilities and shall pay or perform the Assumed Liabilities in accordance with practice similar to the present practice of the LEP in the payment or, as the case may be, the performance of the Assumed Liabilities; and

~~7.28.2~~ indemnify the LEP ~~and the LEP Directors~~ against all Losses suffered or incurred by the LEP or the LEP Directors arising out of or in connection with the Council's failure to comply with this clause ~~87~~ (and for these purposes it is acknowledged and agreed that the LEP Directors may enforce the terms of this clause provided that those Directors have not been and are not likely (in the opinion leading counsel) to be found guilty of any criminal or civil wrongdoing by a court of competent jurisdiction).

8.9. VALUE ADDED TAX

~~8.19.1~~ All sums payable, or consideration given, by:

~~8.1.19.1.1~~ the Council under this agreement are exclusive of VAT and the Council shall in addition pay an amount equal to any VAT chargeable on those sums or consideration; and

~~8.1.29.1.2~~ the LEP under this agreement is exclusive of VAT and the LEP shall in addition pay an amount equal to any VAT chargeable on those sums or consideration.

8.29.2 The LEP and the Council intend that article 5 of the Value Added Tax (Special Provisions) Order 1995 (*SI 1995/1268*) shall apply to the sale of the Assets under this agreement and agree to use all reasonable endeavours to secure that the sale is treated as neither a supply of goods nor a supply of services under that article but neither the LEP nor the Council shall be required to make any appeal to any tribunal or court against any determination by HMRC that the sale, or any part, shall be treated as such.

8.39.3 If HMRC, at any time, determines in writing that VAT is payable on the sale of all or some of the Business or Assets, the LEP shall promptly deliver to the Council a copy of that written determination and a proper VAT invoice in respect of the VAT payable and the Council shall within five days of the receipt of such determination and VAT invoice pay to the LEP a sum equal to:

8.3.49.3.1 the amount of VAT determined by HMRC to be chargeable; and

8.3.29.3.2 any interest charged by HMRC due to late payment of such VAT to the extent that it results from a breach by the Council of any of its obligations under this clause 98.

8.49.4 The Council:

8.4.49.4.1 warrants to the LEP that it (or the representative member of the Council's VAT purposes group) is a taxable person (as defined in section 3 of VATA 1994).

8.4.2 ~~undertakes to the LEP that it will, on and immediately after Completion, use the Assets to carry on the same kind of business (whether or not as part of any existing business of the Council) as that carried on by the LEP in relation to the Business and Assets before Completion.~~

8.59.5 The LEP and the Council do not intend to make a joint application to HMRC for the Council to be registered for VAT under the VAT registration number of the LEP, under regulation 6(1)(d) of the Value Added Tax Regulations 1995 (*SI 1995/2518*).

9.10. EMPLOYEES

10.1 The parties agree that the sale and purchase pursuant to this agreement will constitute a relevant transfer for the purposes of TUPE and, accordingly, that it will not operate so as to terminate the contracts of employment of any of the Employees or any collective agreements with trade unions recognised by the LEP in respect of the Employees. Such contracts shall be transferred to the Council pursuant to TUPE with effect from the Effective Time.

10.2 ~~The LEP undertakes to the Council:~~

10.2.1 ~~that it has complied with all of its obligations and those of any of its predecessors (whether or not legally binding or in respect of which it would be expected to comply by any regulatory or other body to which it is subject) due to or in connection with the Employees or any body representing them (or any of the said obligations the LEP would have had under or in connection with such contracts but for TUPE);~~

10.2.2 ~~that it has paid and shall pay all sums due to or in relation to the Employees up to and including the Effective Time (whether arising under common law.~~

Commented [CS2]: The Council is keen to avoid any fetter on its freedom of action post-transfer. Although in this case the provision is VAT related, it is not clear that VAT is a significant issue or risk for this transfer and the provision is therefore dispensable.

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statute, equity or otherwise) including all salaries, wages, bonus or commission, expenses, holiday pay, National Insurance and pension contributions, liability to Taxation and other sums payable in respect of any period up to the Effective Time;

10.2.3 that it has complied and shall comply in all respects with its obligations under regulation 11 and regulation 13 of TUPE; an.

9.4.10.2.4 that there are no sums owing to or from any Employee other than reimbursement of expenses for the current [PERIOD] and wages for the current salary period;

9.2.10.3 The LEP shall have no liability to the Council for any claims or losses which may be brought against or incurred by the Council whether relating to the period before or after the Effective Time in respect of any persons whose employment is transferred to the Council, whether under TUPE or otherwise.

9.3.10.4 The Council shall fully indemnify the LEP from and against all claims and losses which may be brought against or incurred by the LEP in respect of any of the Employees, whether in relation to periods before or after the Effective Time, including any claim brought by:

9.3.4.10.4.1 any of the Employees;

9.3.2.10.4.2 any person under regulation 15 of TUPE.

9.4.10.5 If the contract of employment of any Employee is found not to have transferred to the Council under TUPE with effect from the Effective Time, the Council agrees that:

9.4.4.10.5.1 it will within 14 days of being informed of such fact make the relevant Employee an offer of employment in writing; and

9.4.2.10.5.2 any such offer of employment made by the Council will be on terms which are not materially different from that Employee's terms immediately before the Effective Time (save as to the identity of the employer).

On making that offer (or at any time after the offer should have been made if no offer is made), the LEP shall terminate the employment of the relevant Employee and the Council shall fully indemnify the LEP against all claims and losses which may be brought against or incurred by the LEP in respect of the employment of that Employee from the Effective Time until such termination and from the termination of such employment.

10.11. CONTRACTS

10.4.11.1 The Council undertakes to the LEP with effect from the Effective Time to assume the obligations and liabilities of the LEP under the Contracts.

10.2.11.2 This agreement shall constitute an assignment to the Council of the benefit of all of the Contracts which are capable of assignment without the consent of any third party, in each case, with effect from the Effective Time.

10.3.11.3 Insofar as any of the Contracts cannot be assigned to the Council without Third Party Consent:

Commented [CS3]: The Council requires a level of basic assurance in relation to the LEP's employees. We have not sought the relevant remedy (i.e. typical indemnity provisions) for breach by the LEP and have not amended the reverse indemnity in 10.4.

~~40.3.411.3.1~~ the LEP shall at the Council's request use reasonable endeavours with the co-operation of the Council to obtain such consent;

~~40.3.211.3.2~~ unless and until any such Contract is assigned, the LEP shall continue its corporate existence and shall hold such Contract and any monies, goods or other benefits received thereunder as trustee for the Council and its successors in title absolutely;

~~40.3.311.3.3~~ the Council shall (if sub-contracting is permissible and lawful under the Contract in question), as the LEP's sub-contractor, perform all the obligations of the LEP under such Contract and, where sub-contracting is not permissible, the Council shall perform such obligations as agent for the LEP; and

~~40.3.411.3.4~~ unless and until any such Contract is assigned or novated, the LEP shall (so far as it lawfully may) at the Council's cost give all such assistance as the Council may reasonably require to enable the Council to enforce its (or the LEP's) rights under such Contract and (without limitation) shall provide access to all relevant books, documents and other information in relation to such Contract as the Council may require from time to time.

~~40.411.4~~ Nothing in this agreement shall be construed as an assignment or attempted assignment if such assignment or attempted assignment would constitute a breach of such Contract.

~~40.511.5~~ If Third Party Consent to assignment or novation of a Contract is refused, or otherwise not obtained on terms reasonably satisfactory to the Council within 60 Business Days of the Completion Date, the Council shall be entitled, at its sole discretion, to require the LEP to serve proper notice to terminate that Contract.

~~11.12.~~ **BOOK DEBTS**

The Council shall acquire the Book Debts and shall assume the responsibility for their collection.

~~12.13.~~ **POST COMPLETION OBLIGATIONS**

~~42.113.1~~ **Council obligations**

~~42.1.413.1.1~~ The Council acknowledges that:

- (a) it is the government's intention that the Council continues to discharge the functions of the LEP following the Transaction; ~~and~~
- ~~(b) the articles of the LEP require that on a winding-up if any assets exist after payment of liabilities such assets shall be transferred to similar bodies of another body with objects similar to those of the LEP;~~
- ~~(b) and the Council therefore agrees to continue to discharge the functions of the LEP (comprising the Business) to achieve the same aims and broadly in the same manner that those functions were discharged prior to the Effective Time or otherwise in accordance with guidance issued by government from time to time; and~~

- (c) and the Council therefore agrees to apply the Assets (including cash received) after the Effective Time for the purposes of economic development activity or otherwise in accordance with guidance issued by government from time to time.

Commented [CS4]: As previously mentioned, although it is the intention of the Council to continue to discharge the LEP functions, it is not able to create contractual restrictions on its future freedom of action.

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12.213.2 LEP Obligations

12.2.1 ~~The LEP shall retain the Excluded Cash at Completion solely for the purposes of discharging any professional fees associated with the Transaction and the anticipated wind-up of the LEP, and as a contingency fund to cover any other unanticipated costs that are incurred by the LEP following Completion.~~

12.2.2 ~~Subject to its general obligations at law, the LEP shall transfer the balance of the Excluded Cash to the Council once it reasonably believes that all costs for which the Excluded Cash was retained have been discharged.~~

Commented [CS5]: Council's preference is for post Effective Time invoices to be addressed to the Council.

13-14. DATA PROTECTION

The Council undertakes to comply with the Data Protection Laws in relation to its application to the Business and Assets after the Completion Date.

14-15. EXCLUSIONS

14.115.1 To the fullest extent permitted by law, all representations, warranties, conditions, guarantees and stipulations (except those expressly set out herein), ~~express or~~ implied, statutory, customary or otherwise in respect of the Assets or the Business or any of the rights, title and interests transferred or agreed to be transferred pursuant to this agreement are expressly excluded (including any implied warranties and conditions as to title, quiet possession, merchantable or satisfactory quality, fitness for purpose and description).

14.215.2 The Council agrees that the terms and conditions of this agreement and the exclusions and limitations contained in it are fair and reasonable having regard to the following

14.2.115.2.1 that the purpose of this agreement is to transfer the Assets and Assumed Liabilities to the Council in recognition of the transfer by the LEP of its functions as a local enterprise partnership in accordance with government requirements.

14.2.215.2.2 that this agreement is being entered into in anticipation of the solvent winding up of the LEP as a corporate entity subject to the LEP complying with its obligations under this agreement and more generally at law.

15-16. FURTHER ASSURANCE

15.116.1 The LEP shall (at the Council's expense) promptly execute and deliver such documents, perform such acts and do such things as the Council may reasonably require from time to time for the purpose of giving full effect to this agreement.

15.216.2 At the Council's expense, the LEP shall, and shall use all reasonable endeavours to procure that any necessary third party shall, execute and deliver such documents

and perform such acts as may be reasonably be required for the purpose of giving full effect to the agreement, including the transfer of the Assets.

16-17. ASSIGNMENT

Neither party shall assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement (or any other document referred to in it).

17-18. ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to their subject matter.

18-19. VARIATION AND WAIVER

18-419.1 No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18-219.2 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

18-319.3 A delay of failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

19-20. COSTS

Except as expressly provided in this agreement, each party shall pay its own costs and expenses incurred in connection with the negotiation, preparation and execution of this agreement (and any documents referred to in it).

20-21. NOTICES

20-421.1 Any notice given to a party under or in connection with this agreement shall be in writing and shall be:

20-421.1.1 delivered by hand or by pre-paid first-class post, or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

20-221.2 Any notice shall be deemed to have been received:

20-2421.2.1 if delivered by hand, at the time the notice is left at the proper address;
or

20-2221.2.2 if sent by email, at the time of transmission, or, if this time falls outside business hours (being 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday) in the place of receipt, when business hours resume.

~~20.321.3~~ This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

~~21.22.~~ **SEVERANCE**

If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

~~22.23.~~ **AGREEMENT SURVIVES COMPLETION**

This agreement (other than obligations that have already been fully performed) remains in full force after Completion.

~~23.24.~~ **THIRD PARTY RIGHTS**

Unless it expressly states otherwise, this agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

~~24.25.~~ **GOVERNING LAW AND JURISDICTION**

~~24.125.1~~ This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

~~24.225.2~~ Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS WHEREOF this document has been executed and delivered on the date first stated above.

SCHEDULE 1 - ASSETS AND VALUES³

The Assets included in the sale pursuant to this agreement and their respective values are as follows:

ASSET	VALUE
Goodwill	£ [...]
Fixed Assets	£ [...]
Moveable Assets	£ [...]
Benefit of the Contracts	£ [...]
Business Name	£ [...]
Business Information	£ [...]
Third Party Rights	£ [...]
Business Intellectual Property Rights	£ [...]

³ **SP Drafting Note:** we anticipate that the sum of these number will equal £1.00 i.e., the consideration for the transfer of the Assets shall be a nominal amount.

SCHEDULE 2 - COMPLETION AND POST-COMPLETION ACTIONS AND OBLIGATIONS

1. COMPLETION

- 1.1 At completion, the LEP shall deliver to the Council, or procure delivery to the Council of, or make available to the Council.
 - 1.1.1 physical possession of all the Assets capable of passing by delivery, with the intent that title in such Assets shall pass to the Council by and on such delivery;
 - 1.1.2 duly executed agreements in the agreed form for the assignment or novation of the benefit of the Contracts to the Council, or as the Council directs, and all requisite notices, consents and licences therefore;
 - 1.1.3 all such Third Party Consents as the Council may require to vest in the Council or as the Council may direct the full benefit of the Assets;
 - 1.1.4 [duly executed assignments [and licences] in the agreed form, of the Owned Business Intellectual Property Rights and the Goodwill and Business Name;]
 - 1.1.5 [all documents of title, certificates, deeds, licences, agreements and other documents relating to the Business Intellectual Property Rights and all manuals, drawings, plans, documents and other materials and media on which the Business Information is recorded;]
 - 1.1.6 the Contracts;
 - 1.1.7 all VAT Records;
 - 1.1.8 the Records;
 - 1.1.9 all National Insurance and PAYE records fully completed in respect of the Employees and showing that payments are up to date, and all records required to be kept under the Working Time Regulations 1998 and the National Minimum Wage Regulations 2015;
 - 1.1.10 a certified copy of the resolutions, in agreed form, of the board of directors of the LEP authorising the Transaction and the execution and delivery by the officers specified in the resolution[s] of this agreement, and any other documents referred to in this agreement as being required to be delivered by it;
- 1.2 At Completion, the LEP shall transfer such sum representing the balance on the Completion Date of the bank account of the LEP, less a sum equal to the Excluded Cash.
- 1.3 Not later than the Completion Date, the LEP shall send to each of the Employees a letter, in the agreed form, explaining that their employment has been transferred to the Council pursuant to TUPE.
- 1.4 The LEP shall transfer or procure the transfer ownership and control of the Domain Names to the Council and promptly complete the Transfer Formalities.

2. ACTIONS AND OBLIGATIONS AFTER COMPLETION

- 2.1 As soon as practicable after Completion, the LEP and the Council shall each issue a statement in the agreed form to the customers of, and suppliers to, the Business informing them of the transfer of the Business to the Council.
- 2.2 All correspondence, information, orders, enquiries and other documentation, items and all money relating to or connected with the Business or the Assets received by the LEP, on or after Completion shall be immediately passed or paid (as the case may be) to the Council or as it may direct (or in accordance with clause 5, if applicable).
- 2.3 The LEP shall promptly notify the Council of any claims, demands, actions, complaints and proceedings against the LEP brought by any third party in respect of any services supplied by the LEP or in respect of the Assets or the operation of the Business.

SCHEDULE 3- EMPLOYEES⁴

Job title	Date of commencement of continuous employment	Age	Salary	Pension	Bonus	Holidays	Place of work	[Contract type]	Other benefits

⁴ **SP Drafting Note:** details to be inserted

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SCHEDULE 4 - BUSINESS INTELLECTUAL PROPERTY RIGHTS⁵

⁵ **SP Drafting Note:** it is not anticipated that any such rights exist, but this schedule is retained whilst the position is confirmed

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SCHEDULE 5 - ⁶

PART 1 - Owned Business Intellectual Property Rights

PART 2 - IP Licences

⁶ **SP Drafting Note:** retained for completeness for now but this schedule may be surplus to requirements.

SCHEDULE 6 – WARRANTIES

1. Information supplied

1.1 All information contained in this agreement[, all matters contained in the Disclosure Letter] and all other information relating to the Business and the Assets given by or on behalf of the LEP (or its agents or advisers) to the Council (or its agents or advisers) in the course of negotiations leading up to this agreement was, when given, and is now true, accurate and complete in every respect and not misleading.

1.2 There is no information that has not been Disclosed which, if Disclosed, might reasonably affect the willingness of the Council to buy the Business and the Assets on the terms of this agreement.

1.3 The documents in the Disclosure Documents are true and complete copies of the originals.

2. Capacity of the LEP

2.1 The LEP has all requisite power and authority, and has taken all necessary corporate action, to enable it to enter into and perform this agreement and all agreements and documents entered into, or to be entered into, pursuant to the terms of this agreement, and each such agreement and document constitutes (or shall when executed constitute) valid, legal and binding obligations on the LEP enforceable in accordance with their respective terms.

2.2 The execution and performance by the LEP of this agreement and all agreements and documents entered into by it pursuant to this agreement will not breach or constitute a default under the LEP's articles of association, or any agreement, instrument, order, judgment or other restriction which binds the LEP.

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[EXECUTION BLOCKS TO BE CONFIRMED AND INSERTED]⁷

⁷ **SP Drafting Note:** given the low consideration / nature of the arrangement we may want to consider this document being a deed. I have not put in the execution blocks in for this reason.